IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

WP(C).No. 34565 of 2006(M)

PETITIONER:

DR.M.P.ASOKAN,
PLOT NO.26,KUMARANASAN NAGAR,
KADAVANTHARA,KOCHI-20.

BY ADV. SMT.SHAMEENA SALAHUDHEEN.

RESPONDENTS:
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1. **RUBBER BOARD,REP.BY THE CHAIRMAN,**
   P.B.NO.1122,SUB JAIL ROAD,
   KOTTAYAM-686 002.

2. **THE DIRECTOR OF RESEARCH,**
   RUBBER RESEARCH INSTITUTE,
   KOTTAYAM-686 009.

3. **UNION OF INDIA,**
   REP.BY ITS SECRETARY,
   MINISTRY OF COMMERCE,
   NEW DELHI.

R1 & R2 BY ADV. SRI.JOSEPH KODIANTHARA,
R3 BY ADV. SRI.MITHUN MARKOS
SRI.P.PARAMESWARAN NAIR,ASST.S.G.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.34565/2006-M:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ORDER NO. 22/18/95-PLANT (B) DTD. 03/01/2005 ISSUED BY THE R.3.

EXT.P.2: COPY OF THE APPLICATION DTD. 02/04/98 FOR VOLUNTARY RETIREMENT SUBMITTED BY THE PETITIONER TO THE R.2.

EXT.P.3: COPY OF THE LEAVE APPLICATION DTD. 02/04/98 SUBMITTED BY THE PETITIONER TO THE R.2.

EXT.P.4: COPY OF THE FAX MESSAGE DTD. 30/04/98 OF THE R.1.

EXT.P.5: COPY OF THE LETTER DTD. 08/05/98 SUBMITTED BY THE PETITIONER BEFORE THE R.2.

EXT.P.6: COPY OF THE MEMO NO. 2/2/98/RES/SB-1791 DTD. 05/05/98 OF THE R.1.

EXT.P.7: COPY OF THE REPRESENTATION DTD. 02/06/98 SUBMITTED BY THE PETITIONER TO THE R.1.

EXT.P.8: COPY OF THE MEMO NO. 2/41/98-EST DTD. 17/09/98 OF THE R.1.

EXT.P.9: COPY OF THE REPRESENTATION DTD. 30/10/98 SUBMITTED BY THE PETITIONER TO THE HONOURABLE MINISTER FOR COMMERCE.

EXT.P.10: COPY OF THE ORDER NO. 22 (18)/95-PLAINT (B) DTD. 04/05/99 OF THE R.3.

EXT.P.11: COPY OF THE LETTER NO. 22 (18)/95-PLANT (B) DTD. 11/08/99 OF THE R.3. SENT IN RESPONSE TO THE LAWYER NOTICE.

EXT.P.12: COPY OF THE ORDER NO. C1/2/2000-VIG DTD. 22/02/2000 ISSUED BY THE R.1.

EXT.P.13: COPY OF THE APPEAL DTD. 03/04/2000 SUBMITTED BEFORE THE R.3.

EXT.P.14: COPY OF THE JUDGMENT DTD. 27/07/2004 IN ORIGINAL PETITION NO. 9093/2000 OF THIS HONOURABLE COURT.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

V.GIRI, J.

W.P.(C).No.34565 of 2006 M

Dated this the 14th day of November, 2007.

JUDGMENT

Petitioner, who was working as a Deputy Director in the Rubber Board, was deputed to the University of California in U.S.A on a project of Genetic Engineering, stated to be a joint venture between the Rubber Board and the California University. Apparently, according to the petitioner, this was neither based on a foreign policy in the office of the Ministry/Department, nor was it on the basis of a specific contract with the foreign Government. The period of service, on deputation as such commenced on 18.5.1996 and though it was initially for a period of less than one year, it continued up to 31.12.1997. There is a dispute regarding the nature of service rendered during the aforementioned period on deputation, which would be relevant for the purpose of this case. On 8.1.1998, the petitioner rejoined duty. He

applied for leave from 12.1.1998 to 8.5.1998. Apparently, the same was sanctioned and during the currency of the said leave, Vide Ext.P2, the petitioner applied for voluntary retirement from service under Rule 56(k) of the Fundamental Rules. In the meanwhile, there was yet another application submitted by the petitioner as Ext.P3 for earned leave from 2.4.1998 to 8.5.1998. By Ext.P4, the petitioner's application for voluntary retirement was rejected, though the same does not reveal any reason. Petitioner sought for review of Ext.P5, which was rejected under Ext.P6 order by the Chairman of the Rubber Board. Petitioner again sought for a review of the same by Ext.P7 before the Chairman himself, which was rejected under Ext.P8. Petitioner then filed Ext.P9 before the Ministry of Commerce. Ext.P9 was considered and rejected under Ext.P10 dated 4.05.1999 by the Central Government. The rejection of the petitioner's application for voluntary retirement and the order passed by the Central Government as

per Ext.P10 were challenged in O.P.No.9093/00. During the pendency of the original petition, acting in consequence of the rejection of the petitioner's application for voluntary retirement, the Rubber Board treated the petitioner's absence from duty as unauthorized and imposed a punishment of removal from service, as per Ext.P12 dated 22.2.2000. Petitioner sought for amendment of the original petition challenging Ext.P12. This court, by Ext.P14 judgment, set aside Ext.P10 order passed by the Government and directed the Central Government to pass a fresh order on the appeal filed by the petitioner (treating Ext.P9 as an appeal). It was further made clear by this court that the validity of Ext.P12 order (which was Ext.P11 therein) will be dependent on the decision to be taken by the Government pursuant to the directions issued in the judgment. Pursuant to Ext.P14, the petitioner was given an opportunity of hearing. Apparently, a counsel sought to appear on behalf of the petitioner. Permission was

denied. Nevertheless, an order was passed taking note of the contentions of the petitioner. The Central Government again rejected the appeal filed by the petitioner vide Ext.P1, which has been challenged in the writ petition.

2. The 3rd respondent Union of India has filed a counter affidavit supporting Ext.P1 order. It is contended that the eligibility for voluntary retirement is governed by Rule 56(k) of the Fundamental Rules {**for short 'the Rules'}**. As per the said Rule, a Government servant may, by giving a notice of not less than three months in writing to the appropriate authority, retire from service after he attains the age of fifty years, if he is in Group 'A' or Group 'B' service or post, provided, he has entered Central Government service before attaining the age of thirty-five years. Petitioner has crossed the age of 55 and he made an application for voluntary retirement before the Rubber Board. The benefit of Rule 56 (k) of the Rules was to depend upon the

satisfaction contained in the proviso thereto. What is specifically relied on is Sub-Clause (b) of Section 56(k).

> **"(b) Nothing in the clause shall also apply to a Government servant, including scientist or technical expert who (i) is on assignment under the Indian Technical and Economic Co-operation (ITEC) Programme of the Ministry of External Affairs and other Aid Programmes, (ii) is posted abroad in a foreign-based office of a Ministry/Department and (iii) goes on a specific contract assignment to a foreign Government unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year; and"**

What is contended is that the petitioner could have applied for voluntary retirement only if he had completed one year service after resuming charge of the post in India. In other words, the contention is that the benefit of Rule 56(k) would not be available to the petitioner because he had rejoined duty after repatriation only on 8.1.1998 and had sought for voluntary retirement as per Ext.P2 dated 2.4.1998. Thus, the petitioner had

not completed one year of service after assumption of charge on rejoining duty. This is the stand taken by the Rubber Board in Ext.P6 and reiterated in Ext.P8. In Ext.P8, it is mentioned that the Ministry of Commerce has intimated the Rubber Board that the petitioner has no option to seek voluntary retirement, but may have an option of resigning from the organization, if he does not want to continue. Resignation is subject to the approval of the employer. It is this stand, which is reiterated in Ext.P1 order. Petitioner challenges Ext.P1 order now issued by the Central Government. Petitioner also challenges the earlier orders, Exts.P4, P6 and P8 and the earlier order issued by the Government as Exts.P10. He also challenges P12 order issued by the Rubber Board imposing a punishment of termination.

3. The only question to be decided is whether the petitioner was entitled to maintain an application for voluntary retirement in terms of Rule 56(k) of the Fundamental Rules. Petitioner

had crossed the age of 55 years. Therefore, he was entitled to seek voluntary retirement. Petitioner's application has been rejected essentially on the ground that Sub-clause (b) in the proviso to Rule 56(k) provides that Rule 56(k) will not apply in the case of a Government servant who is on (i) Assignment under the ITEC programme of the Ministry of establishment affairs (ii) posted abroad in a foreign based industry of the Ministry/Department and (iii) Specifically sent on a contract to a foreign company.

4. In the aforementioned three contingencies, the Government servant will have to complete one year on assumption of charge in the post in India. That the petitioner did not complete one year of service after rejoining duty is not a matter in dispute. But the question is whether the petitioner was obliged to complete one year of service after completing his deputation abroad and is there an inhibition brought about by reason of Sub-Clause (b) of the proviso. A perusal

of the three categories in the said proviso mentioned above shows that a posting in the University of California as a deputationist of the Rubber Board cannot be treated either as an assignment in the Indian Industry, Government of the Ministry of External Affairs or a post under the Ministry/Department or a specific contract and assignment by the Government. According to the petitioner, the petitioner's deputation abroad was on a joint venture between the Rubber Board and the University. Be that as it may, petitioner is not comprehended by the provisions in the Sub-Clause. Consequently, the period of one year for applying for voluntary retirement under Sub-Clause (b) of the proviso had no application to the case of the petitioner. If that be so, the petitioner was entitled to seek voluntary retirement and going by the Rules unless departmental proceedings were contemplated against the petitioner at that point of time, there is no reason for the appointing authority to decline the petitioner's

application. It is contended that considerable amount has been expended in relation to the petitioner's deputation in the University of California and therefore, the Rubber Board was entitled to decline the petitioner's application for voluntary retirement. In my view, if the Central Government/Rubber Board was entitled to recover any amount from the petitioner, they could have independently taken appropriate steps in that regard. But any such claim, which the Central Government/Rubber Board may have, against the petitioner, could not have been treated as an inhibiting factor against the petitioner seeking voluntary retirement.

5. If the petitioner's application for voluntary retirement was eligible to accepted then obviously, the punishment of removal from service imposed on him under Ext.P12 order becomes untenable. This aspect has been made clear in Ext.P14 judgment. On a perusal of Ext.P1 order as also the earlier orders passed by the Rubber Board

and the Central Government, I am of the view that the petitioner's application for voluntary retirement ought to have been accepted by the Rubber Board. It was rejected on untenable grounds. Affirmation of the same by the Union Government, is also on grounds which were not warranted in terms of the Fundamental Rules.

For all these reasons, the writ petition is allowed. Ext.P1 order passed by the Union Government is set aside. Exts.P4, P6 and P8 orders passed by the Rubber Board rejecting the petitioner's application for voluntary retirement are also set aside. Consequently, Ext.P12 order passed by the Rubber Board imposing a punishment of removal from service is also quashed in circumstances where I have already found that the petitioner's application for voluntary retirement was eligible to be accepted by the Rubber Board. The Rubber Board shall pass fresh orders on Ext.P3 application filed by the petitioner for voluntary retirement in terms of Rule 56(k) of the

Fundamental Rules, in accordance with law, keeping in mind the observations contained in this judgment. Such orders may be passed within three months from the date of receipt of a copy of this judgment.

Sd/-
(V.GIRI)
JUDGE

sk/

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